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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,782	10/14/2003	Jeanne Rae Wolfington	276-9	4225

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LAW OFFICE OF POLLY L. OLIVER

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EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/684,782

Applicant(s)

WOLFINGTON ET AL.

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Drawings

2. The drawings were received on 12/17/04. These drawings are approved.

Claim Objections

3. Claim 13 is objected to because of the following informalities: it appears "such" in line 2 should be replaced with - -said- -. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 6, 7 and 10-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention: the specification is silent to the fact that the hook-and-loop fasteners are permanently mounted to the cover.

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6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 5 recites the limitation "the seams" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blake US Patent 5,086,530.

Blake discloses a foam core (i.e. mattress 15, notoriously well known in the art to comprise high-density foam), a cover (26), an elastic band mounted to the cover at the opening (disclosed to be a fitted contour sheet which is notoriously well known in the art to comprise an elastic band), the cover being fitted around the core so that the band is located within the perimeter of the bottom leaving a substantial area of the bottom of the core uncovered (as clearly seen in Figures 2 and 3) and a plurality of fasteners (25) mounted to the fabric cover.

Regarding claim 2, Blake discloses the core is in the shape of a six-sided block.

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Regarding claim 3, while Blake does not disclose the elastic band is located roughly within two inches of the edge of the bottom. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the band within two inches of the edges of the bottom, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 4 and 5, while Blake does not positively disclose the structure of cover (26), it has been stated to be a conventional fitted contour sheet which is notoriously well known in the art to include four seams extending perpendicularly from the opening in the cover which correspond to the corners of the block.

Regarding claim 6, Blake discloses the fasteners comprise hook-and-loop fasteners and are permanently mounted on the cover.

Regarding claims 8 and 9, Blake discloses the invention except for the use of a right wedge or a six-sided trapezoid defining a bottom. It would have been an obvious matter of design choice to use a right wedge or a six-sided trapezoid defining the bottom, since the applicant has not disclosed that the shape solves any stated problem and it appears that the invention would perform equally well with any appropriate shape (as admitted by the Applicant at page 5, line 20-21 of the instant application).

11. Claims 1-7, are rejected under 35 U.S.C. 103(a) as being unpatentable over Masoncup, US Patent 5,638,562.

Masoncup discloses a foam core (i.e. mattress 6, notoriously well known in the art to comprise high-density foam), a cover (8), an elastic band (40) mounted to the cover at the

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opening, the cover being fitted around the core so that the band is located within the perimeter of the bottom leaving a substantial area of the bottom of the core uncovered (as clearly seen in Figure 4) and a plurality of fasteners (14, 24) mounted to the fabric cover.

Regarding claim 2, Masoncup discloses the core is in the shape of a six-sided block.

Regarding claim 3, while Masoncup does not disclose the elastic band is located roughly within two inches of the edge of the bottom. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the band within two inches of the edges of the bottom, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 4 and 5, while Masoncup does not positively disclose the structure of cover (8), it has been stated to be a conventional fitted bed sheet which is notoriously well known in the art to include four seams extending perpendicularly from the opening in the cover which correspond to the corners of the block.

Regarding claim 6, Masoncup discloses the fasteners comprise hook-and-loop fasteners and are permanently mounted on the cover.

Regarding claim 7, Masoncup discloses the invention except for the fasteners being mounted on the elastic band. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the fasteners on the elastic band, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

Allowable Subject Matter

12. Claims 10-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fuller (Des. 270,800) and Jacobs (US 4,905,330).

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

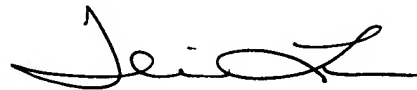
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

A handwritten signature in black ink, appearing to read 'Teri Luu', with a stylized flourish at the end.

TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER